Supreme Court, U.S.
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No. 93-0158

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ORLON R. HILL,

Petitioner

-

vs.

UNITED STATES ARMY,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT AND THE
MERIT SYSTEMS PROTECTION BOARD

SUPPLEMENTAL BRIEF NO. 1
TO
PETITION FOR WRIT OF CERTIORARI

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United States Army, Respondent)

SUPPLEMENTAL BRIEF NO 1
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Petitioner, Orlon R. Hill, respectively prays the Court considers a recent and related decision by the United States Court of Appeals for the Federal Circuit not available to Petitioner when Petition was submitted on 23 Jul 93. Marano v. Dept. of Justice, 92-3132, Aug 4, 1993. The Appeals Court ruled there was a whistleblowing disclosure prior to adverse actions against the employee and that his reassignment was "inextricably intertwined" with the disclosure. The Circuit Court ordered that the case be reconsidered with the burden of proof on the agency. This decision by the

Appeals court is correct but totally inconsistent with their previous ruling of res Judicata in this case (MSPB DOCKET NO DA-1221-92-0394-W-1) as argued below.

Petitioner's Hearing Exhibit "A" for MSPB DOCKET DA7529110549, (pages 34-82 of Appendix A to Petition) was NOT read by Judge Malouf in this first case before or during the hearing on 25 and 27 Sep 91. As stated by Judge Malouf on page 33 of petition:

> "I can't,... because I haven't read the exhibit, Mr. Podbielski, I can't tell you"

The Judge made this statement within minutes of completing the last day of hearing on 27 Sep 1991. She had already disapproved Petitioner's whistleblowing witnesses and disallowed whistleblowing testimony whereas Petitioner was to prove the contents of Hearing Exhibit "A".

Accordingly, the U.S. Army at For Hood Texas has never been required by the Courts to rebut the whistleblowing evidence presented by the Petitioner in Exhibit "A".

Page 34 of petition discusses Judge

Malouf's initial decision that Petitioner HAD made a protected disclosure BEFORE he was demoted yet the judge did not require BURDEN OF PROOF be SHIFTED TO THE ARMY at that time as decided by the Appeals Court in Marano v. Dept. of Justice, 92-3132, Aug 4, 1993.

Petitioner contends that conclusions at pages 41-43 of Petition are significantly reinforced by this latest Appeals Court decision.

John R Hall date 9 Sep 93